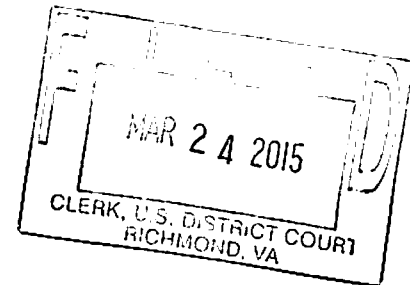


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



JORGE LUIS REYES, SR.,

Petitioner,

V.

COMMONWEALTH OF VIRGINIA,

Respondent.

Civil Action No. 3:14CV755-HEH

MEMORANDUM OPINION
(Granting Relief Under Rule 59(e) and Dismissing Action Without Prejudice)

Petitioner, Jorge Luis Reyes, Sr., a Virginia prisoner proceeding *pro se*, submitted this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions for first degree murder and use of a firearm in the commission of murder in the Circuit Court for the County of Henrico, Virginia. This Court previously dismissed a § 2254 Petition from Reyes concerning these convictions. *Reyes v. Kelly*, No. 3:09CV23-HEH, 2012 WL 2792174, at *1 (E.D. Va. July 9, 2012). According, on January 8, 2015, the Magistrate Judge issued a Report and Recommendation that recommended dismissing Reyes's new § 2254 petition as a successive, unauthorized 28 U.S.C. § 2254 petition. On February 12, 2015, having received no objections, the Court issued a Memorandum Opinion and Order adopting the Report and Recommendation and dismissing the action for lack of jurisdiction.


On February 24, 2015, the Court received from Reyes a Motion to Set Aside February 12, 2015 Order. (ECF No. 8.) Because Reyes filed this motion within twenty-

twenty-eight (28) days of the Court's entry of the February 12, 2015 Memorandum Opinion and Order, the Court construes the motion as a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) ("Rule 59(e) Motion"). *See* Fed. R. Civ. P. 59(e). Thereafter, on March 9, 2014, the Court received from Reyes a Motion to Withdraw Writ of Habeas Corpus. (ECF No. 10.)

In his Rule 59(e) Motion, Reyes asserts that he failed to receive a copy of the Report and Recommendation. In his Motion to Withdraw Writ of Habeas Corpus, Reyes tenders proof that supports this assertion. Reyes's further seeks to "voluntar[ily] withdraw his writ of habeas corpus." (Mot. Withdraw 1.) Reyes's motions (ECF Nos. 8, 10) will be granted. The Court will vacate the February 12, 2015 Memorandum Opinion and Order. The Court will dismiss the action without prejudice pursuant to Reyes's Motion to Withdraw Writ of Habeas Corpus.

An appropriate Order will accompany this Memorandum Opinion.

Date: March 24, 2015
Richmond, Virginia


_____/s/
Henry E. Hudson
United States District Judge

2014-11-11

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